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EX PARTE

June 7, 2010

VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
Room TW-A325
445 12th Street, S.W.
Washington, DC 20554

Re: *In the Matter of Qwest Wireless's Petition for Waiver of the Telecommunications Relay Services Fund Contribution Rules, 47 C.F.R. § 64.604(c)(5)(iii)*; CG Docket No. 03-123

Dear Ms. Dortch:

Pursuant to 47 C.F.R. Sections 1.49(f) and 1.1206 of the Commission's rules, Qwest Wireless (QW) is submitting this *ex parte* so that it can be included in the record of the above-captioned proceeding.

QW urges the Commission to grant its Petition for Waiver of the TRS Fund Contribution Rules (Petition) seeking to be reimbursed for the contributions it has already made to the TRS Fund for the 2009-10 funding year and to be relieved of its remaining contributions. QW filed the Petition last June and the Commission publicly noticed it for comment in October.[1] No parties have opposed the Petition or otherwise filed any comments regarding it. Thus, for the reasons stated in the Petition, in QW's reply comments in support of the Petition, and following, the Commission should move forward and grant the Petition.[2]

QW officially ended service to customers on October 31, 2009, but continues to make significant monthly contributions to the TRS Fund without any customers from whom to recover those

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[1] *See* Qwest Wireless Petition for Waiver of the TRS Fund Contribution Rules, 47 C.F.R. § 64.604(c)(5)(iii), filed June 26, 2009. Public Notice, DA 09-2097, 24 FCC Rcd 12024 (2009).

[2] Qwest Wireless's Reply Comments in Support of its Petition for Waiver of the TRS Fund Contribution Rules, 47 C.F.R. § 64.604(c)(5)(iii), filed Oct. 21, 2009.

contributions. This result is contrary to the intent of the statute which requires that the Commission establish regulations that "generally provide that costs caused by interstate telecommunications relay services . . . be recovered from all *subscribers* for every interstate service."[3] In continuing to require contributions from QW, the Commission is not recovering the TRS costs from subscribers of interstate service as the statute instructs. Instead it is recovering TRS costs from a corporate entity that is not providing any telecommunication services, and has already significantly over-contributed to the TRS Fund.

QW's situation is unusual. QW sought relief from its required TRS contributions because it was exiting the business and its dwindling -- and now non-existent -- customer base did not enable it to fairly recover its TRS contribution obligations. Although exiting a business is not particularly unusual, the circumstances under which QW exited this business are. Most telecommunications providers likely exit the business either because they go bankrupt, or by being acquired by another company. In the first situation, presumably any remaining TRS contribution obligations become a matter to be addressed under bankruptcy rules. In the second situation, the Commission has stated that the surviving entity acquires the TRS contribution obligation of the defunct entity.[4] Further, that this situation is not common in the industry is evidenced by the fact that although QW's Petition was noticed for public comment, no parties commented. Apparently, QW's position is not one shared by others in the industry. Nor are others in the industry concerned that granting a waiver under these particular circumstances is a problem.

Still further, even if granting QW its requested relief would set a precedent for future similarly-situated carriers exiting the business without merging into a continuing company, such a precedent is warranted. Requiring a telecommunications provider to contribute into the TRS Fund when it has few customers from whom to recover that contribution is not well-suited to the plain language of the statute authorizing the cost recovery from all *subscribers* to interstate telecommunications service. In such instances, the Commission should consider permitting a waiver when a telecommunications provider demonstrates that its TRS contribution obligation is excessive and cannot reasonably be recovered from its current customer base, so that the TRS contribution obligation is in accord with the statutory requirement.

Still further, even if the Commission were to determine that the TRS contributions were due while QW had some customers purchasing interstate service from whom it could at least partially

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[3] 47 U.S.C. § 225(d)(3)(B) (emphasis added).

[4] *See, e.g.,* Instructions to the Telecommunications Reporting Worksheet, Form 499-A (rev. Feb. 2010) at 12 (stating that "[f]ilers should not file revised revenue information to reflect mergers, acquisitions, or sales of operating units. In the event that a filer that submitted a From 499-A no longer exists, the successor company to the contributor's assets or operations is responsible for continuing to make assessed contribution or true-up payments, if any, for the funding period and must notify the Form 499 Data Collection Agent."). QW did not exit the business as a result of a merger, acquisition, or sale of operating assets. It simply closed up shop.

recover those contributions, at a minimum the Commission must relieve QW of its TRS contribution obligations as of October 31, 2009, when QW ceased having any customers from whom it could recover those contribution obligations. Requiring TRS obligations in the absence of *any* customers from whom to recover that contribution directly violates the statutory requirement to recover the costs from all *subscribers* to interstate telecommunications service. And, at the point that QW ceased having customers, it was no longer a provider of interstate telecommunications services so as to be required to contribute under the Commission's rule.[5] As such, QW should be refunded the TRS contributions it has paid since October 31, 2009.

Finally, as QW has previously stated, allowing the requested relief will not harm the TRS Fund. NECA has recently submitted a revised fund size estimate for the 2009-10 funding year, decreasing the current fund size estimate by $189.2 million.[6] Given this significant surplus, there would be no harm to the TRS Fund in reimbursing QW its $1.9 million contribution into the Fund for the 2009-10 funding year.

For these reasons and those QW has previously stated, the Commission should grant QW's Petition to waive its TRS contribution obligations for funding year 2009-10, and direct NECA to refund the amounts QW has paid for that funding year. Alternatively, at a minimum the Commission should grant the waiver requested at least as of the time QW ceased having customers and being a provider of interstate telecommunications services, and refund QW's TRS contributions paid after October 31, 2009.

Please contact me with any questions you may have regarding this matter.

/s/ Tiffany West Smink

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[5] Qwest ceased billing all customers for telecommunications services and terminated all telecommunications services to customers on October 31, 2009. Under the Commission's rules "[e]very carrier *providing interstate telecommunications services* shall contribute to the TRS Fund on the basis of interstate end-user telecommunications revenues." 47 C.F.R. § 64.604(c)(5)(iii)(A) (emphasis added).

[6] *See* Letter from John A. Ricker, NECA to Marlene H. Dortch, FCC, CG Docket Nos. 03-123 & 10-51 attaching NECA's Supplement to the Annual Submission of TRS Payment and Revenue Requirements for July 2009-June 2010 (March 30, 2010).